

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ALTERRA AMERICA INSURANCE CO.,

INDEX NO. 652813/2012

Plaintiff

-v-

AMENDED COMPLAINT

NATIONAL FOOTBALL LEAGUE, NFL PROPERTIES, LLC,
TIG INSURANCE COMPANY, CENTURY INDEMNITY
COMPANY, CHARTIS PROPERTY CASUALTY COMPANY,
DISCOVER PROPERTY & CASUALTY INSURANCE
COMPANY, FEDERAL INSURANCE COMPANY, GREAT
NORTHERN INSURANCE COMPANY, GUARANTEE
INSURANCE COMPANY, HARTFORD ACCIDENT &
INDEMNITY COMPANY, NORTH RIVER INSURANCE
COMPANY, ONEBEACON AMERICA INSURANCE
COMPANY, UNITED STATES FIRE INSURANCE
COMPANY, ACE AMERICAN INSURANCE COMPANY,
ILLINOIS UNION INSURANCE COMPANY, ALLSTATE
INSURANCE COMPANY, ARROWOOD INDEMNITY
COMPANY, CHARTIS SPECIALTY INSURANCE COMPANY,
CONTINENTAL CASUALTY COMPANY, CONTINENTAL
INSURANCE COMPANY, ILLINOIS NATIONAL INSURANCE
COMPANY, INDEMNITY INSURANCE COMPANY OF NORTH
AMERICA, NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA, MUNICH REINSURANCE AMERICA,
INC., NEW ENGLAND REINSURANCE CORPORATION, ST.
PAUL PROTECTIVE INSURANCE COMPANY, TRAVELERS
CASUALTY & SURETY COMPANY, TRAVELERS INDEMNITY
COMPANY, TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA, VIGILANT INSURANCE COMPANY,
WESTCHESTER FIRE INSURANCE COMPANY, XL
INSURANCE AMERICA, INC. and COMPANIES ABC-XYZ,
inclusive,

Defendants.

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Plaintiff Alterra American Insurance Company (“Alterra”) alleges the following against Defendants National Football League (“NFL”), NFL Properties, LLC (“NFL Properties”), TIG Insurance Company (“TIG”), Century Indemnity Company (“Century”), Chartis Property Casualty Company (“Chartis Property”), Discover Property & Casualty Insurance Company (“Discover”), Federal Insurance Company (“Federal”), Great Northern Insurance Company (“Great Northern”), Guarantee Insurance Company (“Guarantee”), Hartford Accident & Indemnity Company (“Hartford”), North River Insurance Company (“North River”), OneBeacon American Insurance Company (“OneBeacon”), United States Fire Insurance Company (“U.S. Fire”), Ace American Insurance Company (“Ace”), Illinois Union Insurance Company (“Illinois Union”), Allstate Insurance Company (“Allstate”), Arrowood Indemnity Company (“Arrowood”), Chartis Specialty Insurance Company (“Chartis Specialty”), Continental Casualty Company (“Continental Casualty”), Continental Insurance Company (“Continental Insurance”), Illinois National Insurance Company (“Illinois National”), Indemnity Insurance Company Of North America (“Indemnity Insurance”), National Union Fire Insurance Company Of Pittsburgh, PA (“National Union”), Munich Reinsurance America, Inc. (“Munich”), New England Reinsurance Corporation (“New England”), St. Paul Protective Insurance Company (“St. Paul”), Travelers Casualty & Surety Company (“Travelers Casualty”), Travelers Indemnity Company (“Travelers Indemnity”), Travelers Property Casualty Company Of America (“Travelers Property”), Vigilant Insurance Company (“Vigilant”), Westchester Fire Insurance Company (“Westchester”), XL Insurance America Inc. (“XL”) and Companies ABC-XYZ, (all of the aforementioned insurers are hereinafter collectively referred to “Insurer Defendants”):

NATURE OF ACTION

1. This declaratory judgment action is brought pursuant to New York CPLR §3001.
2. In Count I, Alterra seeks a declaration regarding its duty to defend the NFL and/or NFL Properties in numerous lawsuits that former NFL players have filed against the NFL and NFL Properties, alleging they sustained neurological injuries during their playing careers.
3. In Count II, Alterra seeks a declaration regarding its duty to indemnify the NFL and/or NFL Properties in the underlying lawsuits.
4. In Count III, Alterra asserts a breach of contract claim against the NFL and/or NFL Properties, alleging that they breached their contractual duty to cooperate with Alterra.
5. In Count IV, Alterra seeks a declaration regarding the rights and obligations of the Insurer Defendants and Companies ABC-XYZ, if any, to the NFL and/or NFL in connection with the underlying lawsuits.

VENUE

6. Venue is appropriate under CPLR §503(a) because at least one of the Defendants is a resident of New York County.

PARTIES

7. Alterra is a corporation duly organized under the law of the State of Delaware and its principal place of business is in Richmond, Virginia. Alterra is authorized and licensed to issue policies in the State of New York.
8. The NFL is an unincorporated association with its headquarters and principal place of business located at 345 Park Avenue, New York, New York. Of the NFL's thirty-two member football clubs, three are affiliated with the State of New York – the Buffalo Bills, the New York Giants, and the

New York Jets. The NFL has a rich history in the State of New York, including several former member clubs based out of New York, such as the Rochester Jeffersons (1920-1925), the Brooklyn Lions (1926), the New York Yankees (1927-1928), the Staten Island Stapletons/Stapes (1929-1932), the New York Bulldogs/Yanks (1949-1951), and the Brooklyn Dodgers/Tigers (1930-1944). NFL has hosted the NFL Draft in New York City each year since 1965.

9. NFL Properties is a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in the State of New York, New York County.

10. Upon information and belief, NFL Properties, LLC is the successor to NFL Properties, Inc.

11. Upon information and belief, TIG is a California corporation with its principal place of business in Manchester, New Hampshire. At all relevant times, TIG was and is authorized to do business in the State of New York.

12. Upon information and belief, TIG is the successor in interest to Transamerica Insurance Company ("Transamerica").

13. Upon information and belief, Century is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. At all relevant times, Century was and is authorized to do business in the State of New York.

14. Upon information and belief, Century is the successor in interest to the Insurance Company of North America ("INA"), Indemnity Insurance Company of North America ("IINA"), and California Union Insurance Company.

15. Upon information and belief, Chartis Property is a Pennsylvania corporation with its principal place of business in New York, New York. At all relevant times, Chartis Property was and is authorized to do business in the State of New York.

16. Upon information and belief, Chartis Property was formerly known as Birmingham Fire Insurance Company of Pennsylvania ("Birmingham Fire").

17. Upon information and belief, Discover is an Illinois corporation with its principal place of business in St. Paul, Minnesota. At all relevant times, Discover was and is authorized to do business in the State of New York.

18. Upon information and belief, Discover was formerly known as Northbrook National Insurance Company ("Northbrook National").

19. Upon information and belief, Federal is an Indiana corporation with its principal place of business in Warren, New Jersey. At all relevant times, Federal was and is authorized to do business in the State of New York.

20. Upon information and belief, Great Northern is an Indiana corporation with its principal place of business in Warren, New Jersey. At all relevant times, Great Northern was and is authorized to do business in the State of New York.

21. Upon information and belief, Guarantee is a Florida corporation with its principal place of business in Fort Lauderdale, Florida. At all relevant times, Guarantee was and is authorized to do business in the State of New York.

22. Upon information and belief, Hartford is a Connecticut corporation with its principal place of business in Hartford, Connecticut. At all relevant times, Hartford was and is authorized to do business in the State of New York.

23. Upon information and belief, North River is a New Jersey corporation with its principal place of business in Morristown, New Jersey. At all relevant times, North River was and is authorized to do business in the State of New York.

24. Upon information and belief, OneBeacon is a Massachusetts corporation with its principal place of business in Boston, Massachusetts. At all relevant times, OneBeacon was and is authorized to do business in the State of New York.

25. Upon information and belief, OneBeacon is the successor in interest to General Accident Fire and Life Assurance Corporation Ltd. ("General Accident").

26. Upon information and belief, U.S. Fire is a Delaware corporation with its principal place of business in Morristown, New Jersey. At all relevant times, US Fire was and is authorized to do business in the State of New York.

27. Upon information and belief, ACE is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. At all relevant times, ACE was and is authorized to do business in the State of New York.

28. Upon information and belief, Illinois Union is an Illinois corporation with its principal place of business in Philadelphia, Pennsylvania. At all relevant times, Illinois Union was and is authorized to do business in the State of New York.

29. Upon information and belief, Allstate is an Illinois corporation with its principal place of business in Northbrook, Illinois. At all relevant times, Allstate was and is authorized to do business in the State of New York.

30. Upon information and belief, Allstate is the successor in interest to Northbrook Insurance Company.

31. Upon information and belief, Arrowood is a Delaware corporation with its principal place of business in Charlotte, North Carolina. At all relevant times, Arrowood was and is authorized to do business in the State of New York.

32. Upon information and belief, Arrowood was formerly known as Royal Indemnity Company.

33. Upon information and belief, Chartis Specialty is an Illinois corporation with its principal place of business in New York, New York. At all relevant times, Chartis Specialty was and is authorized to do business in the State of New York.

34. Upon information and belief, Chartis Specialty was formerly known as American International Specialty Lines Insurance Company ("AISLC").

35. Upon information and belief, Continental Casualty is an Illinois corporation with its principal place of business in Chicago, Illinois. At all relevant times, Continental Casualty was and is authorized to do business in the State of New York.

36. Upon information and belief, Continental Insurance is a Pennsylvania corporation with its principal place of business in Chicago, Illinois. At all relevant times, Continental Insurance was and is authorized to do business in the State of New York.

37. Upon information and belief, Continental Insurance is the successor in interest to Harbor Insurance Company, Niagara Fire Insurance Company, and Fidelity & Casualty Company of New York.

38. Upon information and belief, Illinois National is an Illinois corporation with its principal place of business in Chicago, Illinois. At all relevant times, Illinois National was and is authorized to do business in the State of New York.

39. Upon information and belief, Indemnity Insurance is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. At all relevant times, Indemnity was and is authorized to do business in the State of New York.

40. Upon information and belief, National Union is a Pennsylvania corporation with its principal place of business in New York, New York. At all relevant times, National Union was and is authorized to do business in the State of New York.

41. Upon information and belief, Munich is a Delaware corporation with its principal place of business in Princeton, New Jersey. At all relevant times, Munich was and is authorized to do business in the State of New York.

42. Upon information and belief, Munich was formerly known as American Re-Insurance Company.

43. Upon information and belief, New England is a Connecticut corporation with its principal place of business in Boston, Massachusetts. At all relevant times, New England was and is authorized to do business in the State of New York.

44. Upon information and belief, St. Paul is an Illinois corporation with its principal place of business in St. Paul, Minnesota. At all relevant times, St. Paul was and is authorized to do business in the State of New York.

45. Upon information and belief, St. Paul is the successor in interest to Northbrook Property and Casualty Insurance Company ("Northbrook Property & Casualty").

46. Upon information and belief, Travelers Casualty is a Connecticut corporation with its principal place of business in Hartford, Connecticut. At all relevant times, Travelers Casualty was and is authorized to do business in the State of New York.

47. Upon information and belief, Travelers Casualty is the successor in interest to Aetna Casualty & Surety Company ("Aetna").

48. Upon information and belief, Travelers Indemnity is a Connecticut corporation with its principal place of business in Hartford, Connecticut. At all relevant times, Travelers Indemnity was and is authorized to do business in the State of New York.

49. Upon information and belief, Travelers Indemnity is the successor in interest to Gulf Insurance Company ("Gulf").

50. Upon information and belief, Travelers Property is a Connecticut corporation with its principal place of business in Hartford, Connecticut. At all relevant times, Travelers Property was and is authorized to do business in the State of New York.

51. Upon information and belief, Travelers Property was formerly known as Travelers Indemnity Company of Illinois ("Travelers Indemnity").

52. Upon information and belief, Vigilant is a corporation organized under the laws of New York, with its principal place of business in Warren, New Jersey. Vigilant is licensed to conduct insurance business in New York.

53. Upon information and belief, Westchester is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. At all relevant times, Westchester was and is authorized to do business in the State of New York.

54. Upon information and belief, Westchester is the successor in interest International Insurance Company.

55. Upon information and belief, XL is a Delaware corporation with its principal place of business in Stamford, Connecticut. At all relevant times, XL was and is authorized to do business in the State of New York.

56. Defendant Companies ABC-XYZ, inclusive, are insurers and underwriters other than those named above, which issued and/or subscribed to one or more policies of liability

insurance issued to the NFL and/or NFL Properties. Companies ABC-XYZ, inclusive, are also insurers and underwriters, which issued and/or subscribed to one or more policies of liability insurance issued to equipment manufacturers for the NFL and NFL Properties, both of which may be insureds or additional insureds under said policies. The true names, capacities, and obligations of Companies ABC-XYZ, inclusive, are unknown to Alterra, who therefore sues those Defendants by such fictitious names. Alterra will amend this pleading to show the true names, capacities, and obligations of Companies ABC-XYZ, inclusive, when the same have been ascertained.

FACTUAL BACKGROUND

I. THE CONCUSSION ACTIONS

57. Beginning in or about July 2011, certain former professional football players and their spouses began filing suits against the NFL and NFL Properties in numerous individual and class action litigations throughout the United States alleging that the NFL and NFL Properties breached their duties to warn and protect players from the long-term risks of concussions including MTBI and CTE (“Underlying Concussion Actions”).

58. To date, at least 150 Underlying Concussion Actions have been filed including more than 3,000 former players and 1,000 spouses.

59. Since January 2012, numerous Underlying Concussion Actions have been transferred to Multi-District Litigation in the United States District Court for the Eastern District of Pennsylvania in the case captioned In re National Football League Players’ Concussion Injury Litigation, docket number 12-md-02323, where they have been consolidated for all pre-trial proceedings including discovery.

60. On July 17, 2012, the underlying plaintiffs filed an Amended Master Complaint in the Multi-District Litigation. (See, **Exhibit A**, In Re National Football Players’ Concussion Injury

Litigation, Plaintiffs’ Amended Master Administrative Long-Form Complaint, E.D. Pa. No. 2:12-md-02323-AB, July 17, 2012.)

61. The Amended Master Complaint alleges, *inter alia*, that the NFL and NFL Properties “ignored, minimized, disputed, and actively suppressed broader awareness of the link between sub-concussive and concussive injuries in football and the chronic neuro-cognitive damage, illnesses, and decline suffered by former players, including the Plaintiffs.” (Ex. A ¶ 5.)

II. ALTERRA’S POLICY AND TENDERS

62. Alterra issued to the NFL and NFL Properties an Excess Casualty Follow Form Policy, Policy No. MAX6XL000288, effective August 1, 2011 to August 1, 2012 (“Alterra Policy”).

63. Upon information and belief, the Alterra Policy was brokered in New York and issued to the NFL and/or NFL Properties in New York.

64. The Alterra Policy under form AEC0501 (03/11) has a Per Occurrence Limit of \$25 million, which is excess of Chartis’ Commercial Umbrella Liability Policy, Policy No. 25030450, with a Per Occurrence Limit of \$50 million (“Chartis Policy”) and excess of ACE American Insurance Company’s Commercial General Liability Policy, Policy Number G23857285 004, with a Per Occurrence Limit of \$1 million (“Ace Policy”).

65. The terms and conditions of the Chartis Policy are made part of the Alterra Policy, except with respect to any contrary provisions contained in, or endorsed in, the Alterra Policy.

66. The Ace Policy, which is primary to the Chartis Policy and Alterra Policy, contains numerous New York endorsements.

67. The NFL and NFL Properties tendered some of the Underlying Concussion Actions to Alterra, seeking defense and indemnification under the Alterra Policy.

68. The NFL and NFL Properties tendered the following Underlying Concussion Actions to Alterra:

- a. *Vernon Maxwell, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01023-AB;
- b. *Dave Pear, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01025-AB;
- c. *Charles Ray Easterling, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:11-cv-05209-AB;
- d. *Larry Barnes, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01024-AB;
- e. *Jim Finn, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01034-AB;
- f. *Harry Jacobs, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01035-AB;
- g. *Fulton Kuykendall & Sherry Kuykendall v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01030-AB;
- h. *Dorsey Levens v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01028-AB;
- i. *Jamal Lewis v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01031-AB;
- j. *Ryan E. Stewart & Javonne Stewart. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01029-AB;

- k. *Marvin Jones, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01027-AB;
- l. *Reginald Rucker, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01036-AB;
- m. *Reginald Austin, et al v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01032-AB;
- n. *Brent Boyd, et al v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00092-AB;
- o. *Christine Dronett v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01033-AB;
- p. *Andrew Glover, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00287-AB;
- q. *Ron Solt, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00262-AB;
- r. *Joel Steed v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01026-AB;
- s. *Steve Wallace, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00336-AB;
- t. *Rob Johnson, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00324-AB;
- u. *Shawn Wooden, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01037-AB;

- v. *Fred Barnett v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00546-AB;
- w. *Eric Hilgenberg v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00598-AB;
- x. *Britt Hager, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-0601-AB;
- y. *Ashley Lelie, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-0600-AB;
- z. *George W. Adams, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00683-AB;
- aa. *Janet Duranko v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00702-AB;
- bb. *Steve Everitt, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-AB-00731-AB;
- cc. *Brian Henesey, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00729-AB;
- dd. *Tyrone Hughes, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01423-AB;
- ee. *John Brodie, et al v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00861-AB;
- ff. *Sirr Parker, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00868-AB;

- gg. *Tregg Duerson v. NFL, et al.* pending in the U.S.D.C.-N.D. Ill., under Case No. 1:12-cv-02513;
- hh. *Michael Myers v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01424-AB;
- ii. *Carl Hairston, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-00989-AB;
- jj. *Jethro Pugh, Jr., et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01165-AB;
- kk. *William Rademacher, v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03776-AB;
- ll. *Wes Hopkins, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01239-AB;
- mm. *Charles Alexander, Jr., et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01923-AB;
- nn. *Eric Allen & Lynn Allen, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01281-AB;
- oo. *Mark Rypien, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01496-AB;
- pp. *John "Golden" Richards, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01623-AB;
- qq. *Greg Landry, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01643-AB;

- rr. *George Adams & Michelle Adams v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02099-AB;
- ss. *Michael Haddix, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-3532-AB;
- tt. *Alfred Camarena v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-3125-AB;
- uu. *Victor Jones & Stacey Jones v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02101-AB;
- vv. *Kerry Justin & Lisa Justin v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02100-AB;
- ww. *Sydney Justin & Mari Justin v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02098-AB;
- xx. *Lincoln Kennedy & Patricia Kennedy v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02105-AB;
- yy. *Pete Koch v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02104-AB;
- zz. *David M. Krieg v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02103-AB;
- aaa. *Frank LeMaster, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02464-AB;
- bbb. *Frank LeMaster, et al. v. NFL, et al.* pending in Philadelphia City Court of Common Pleas, under Case No. 120302540;

ccc. *Scott Darwin Player & Julianna Player v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02102-AB;

ddd. *Bernard Paul Parrish v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01700-AB;

eee. *Jay Taylor v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02097-AB;

fff. *Jamal Anderson, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03124-AB;

ggg. *Michael Brooks, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02505-AB;

hhh. *Alex Karras, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-01916-AB;

iii. *Myron Guyton, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03336-AB;

jjj. *Thomas Franklin McDonald, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02728-AB;

kkk. *Matt Schobel v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02801-AB;

lll. *Mark Chmura, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02108-AB;

mmm. *Rickey Jackson, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02799-AB;

nnn. *Jeff Hostetler, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02199-AB;

ooo. *Lee Roy Jordan, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02802-AB;

ppp. *Floyd Little, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02219-AB;

qqq. *Art Monk, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03533-AB;

rrr. *Robert Kuechenberg, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03535-AB;

sss. *Brad Culpepper, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02490-AB;

ttt. *Charles Hannah v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02489-AB;

uuu. *Thomas Henderson, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03534-AB;

vvv. *Nathaniel D. Abraham, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03716-AB;

www. *Leddure Rashad Bauman, et al. v. NFL, et al.* pending in the U.S.D.C.-C.D. Cal., under Case No. 2:12-cv-05835-R-MAN;

xxx. *Sam "Bam" Cunningham, et al. v. NFL, et al.* pending in the U.S.D.C.-C.D. Cal., under Case No. 2:12-cv-06008-R-MAN;

yyy. *Eric Dickerson, et al. v. NFL* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03338-AB;

zzz. *Robert L. Edwards et al. v. NFL* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-04086-AB;

aaaa. *Byron Evans, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-02682-AB;

bbbb. *Charlie Granger, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03337-AB;

cccc. *John Hannah, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-3379-AB.

dddd. *Joe Kapp, et al. v. NFL, et al.* pending in the U.S.D.C. C.D. Cal., under Case No. 2:12-cv-05833-R-MAN;

eeee. *Johnnie Morton, et al. v. NFL, et al.* pending in the U.S.D.C.-C.D. Cal., under Case No. 2:12-cv-05435-R-MAN;

ffff. *Jeff Nixon, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03352-AB;

gggg. *Errict Rhett, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03537-AB;

hhhh. *Scott M. Ross v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03479-AB;

iiii. *Frank V. Sanders, et al. v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03536-AB;

jjjj. *Todd Scott v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-4241-AB;

kkkk. *Jason Short and Kierston Short v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03478-AB;

llll. *David D. Studdard v. NFL* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03531-AB;

mmmm. *Steve Wallace v. NFL, et al.* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03715-AB;

nnnn. *Danny White, et al. v. NFL* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03778-AB; and

oooo. *Kevin Williams, et al. v. NFL* pending in the U.S.D.C. - E.D. Pa., under Case No. 2:12-cv-03777-AB.

69. Alterra timely declined coverage to the NFL and NFL Properties under the Alterra Policy for the tendered Underlying Concussion Actions.

III. INSURER DEFENDANTS' POLICIES

70. Set forth in **Exhibit B** hereto is the available information regarding the Insurer Defendants' policy numbers and policy periods currently known to Alterra.

IV. THE NFL AND NFL PROPERTIES' CALIFORNIA ACTION, AND THEIR IMPROPER CONDUCT

71. Alterra first obtained information regarding the Insurer Defendants and their respective policies from a complaint that the NFL and NFL Properties filed against Alterra and the Insurer Defendants in the Superior Court of the State of California, County of Los Angeles, Civil Case No. BC490342, on August 15, 2012.

72. Upon information and belief, **Exhibit C** is a true and accurate copy of the complaint that the NFL and NFL Properties filed against Alterra and the Insurer Defendants in the Superior Court of the State of California, County of Los Angeles, Civil Case No. BC490342 (“California Action”).

73. Upon information and belief, the NFL and NFL Properties filed the California Action just two days after Alterra filed its initial Complaint against the NFL and NFL Properties in New York on August 13, 2012.

74. In the California Action, the NFL and NFL Properties seek a declaration of Alterra’s and the Insurer Defendants’ rights and obligations under their respective insurance policies in connection with the Underlying Concussion Actions.

75. Alterra began requesting, *inter alia*, policy and coverage information regarding other insurance carriers from the NFL and NFL Properties, as well as information regarding the Underlying Concussion Actions, no later than April 2012.

76. It is clear from the complaint in the California Action that the NFL and NFL Properties had extensive information readily available regarding the Insurer Defendants and their respective insurance policies.

77. It is also clear from the complaint in the California Action that the NFL and NFL Properties had extensive information readily available regarding the Underlying Concussion Actions.

78. The NFL and/or NFL Properties never provided Alterra with any of its requested information.

79. Under the Alterra Policy, the NFL and/or NFL Properties have a contractual duty to cooperate with Alterra in its investigation of any claims against the NFL and/or NFL Properties.

80. The NFL and/or NFL Properties breached their contractual duty to cooperate with Alterra by, *inter alia*, failing to provide Alterra with the requested information.

81. Alterra has been appreciably prejudiced by the NFL and/or NFL Properties' breaches.

82. Moreover, the NFL and NFL Properties filed their California Action in response to Alterra's New York action and are improperly attempting to forum shop.

COUNT I

(Declaratory Relief as to Duty to Defend - Against the NFL and NFL Properties)

83. Alterra repeats and incorporates by reference the allegations of paragraphs 1 through 82 above.

84. Under the terms of the Alterra Policy, Alterra is not obligated to defend the NFL and/or NFL Properties in the tendered Underlying Concussion Actions.

85. An actual controversy of a justiciable nature presently exists between the Plaintiff and the NFL and NFL Properties concerning the proper construction of the Alterra Policy and the rights and obligations of the parties. The controversy is of sufficient immediacy to justify the issuance of a declaratory judgment.

COUNT II

(Declaratory Relief as to Duty to Indemnify – Against the NFL and NFL Properties)

86. Alterra repeats and incorporates by reference the allegations of paragraphs 1 through 85 above.

87. Under the terms of the Alterra Policy, Alterra is not obligated to indemnify the NFL and/or NFL Properties in the tendered Underlying Concussion Actions.

88. An actual controversy of a justiciable nature presently exists between the Plaintiff and the NFL and NFL Properties concerning the proper construction of the Alterra Policy and the rights and obligations of the parties. The controversy is of sufficient immediacy to justify the issuance of a declaratory judgment.

COUNT III

(Breach of Contract - Duty to Cooperate - Against the NFL and NFL Properties)

89. Alterra repeats and incorporates by reference the allegations of paragraphs 1 through 88 above.

90. Under the Alterra Policy, NFL and/or NFL Properties have a contractual duty to cooperate with Alterra in its investigation of any claims against the NFL and/or NFL Properties.

91. The NFL and/or NFL Properties breached their contractual duty to cooperate with Alterra by, *inter alia*, failing to provide Alterra with requested policy and coverage information and information regarding the Underlying Concussion Actions.

92. Alterra has been appreciably prejudiced by the NFL and/or NFL Properties' breaches.

93. As a direct and proximate result of the NFL and NFL Properties' breach of their duty to cooperate, Alterra has suffered damages, including but not limited to, incurring attorneys and other costs in this action.

COUNT IV

(Declaratory Judgment – Against Insurer Defendants and Companies ABC-XYZ)

94. Alterra repeats and incorporates by reference the allegations of paragraphs 1 through 93 above.

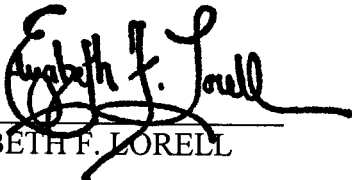
95. The Insurer Defendants and Companies ABC-XYZ issued one or more policies of liability insurance to the NFL and/or NFL Properties that may provide coverage for the Underlying Concussion Actions.

96. Alterra seeks a declaration of the rights and obligations of the Insurer Defendants and Companies ABC-XYZ to the NFL and/or NFL Properties in connection with the Underlying Concussion Actions.

WHEREFORE, Alterra demands judgment for the following:

- a. a declaration that Alterra does not have a duty to defend the NFL and/or NFL Properties in the tendered Underlying Concussion Actions;
- b. a declaration that Alterra does not have a duty to indemnify the NFL and/or NFL Properties in the tendered Underlying Concussion Actions;
- c. a declaration that the NFL and/or NFL Properties breached their contractual duty to cooperate under the Alterra Policy;
- d. a declaration of the Insurer Defendants' and Companies ABC-XYZ's rights and obligations, if any, to defend and indemnify the NFL and NFL Properties in connection with the Underlying Concussion Actions; and
- e. Awarding Alterra attorneys' fees, costs, and disbursement herein, and such other legal and equitable relief as the Court deems just and proper.

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By: 
ELIZABETH F. LORELL

Dated: August 22, 2012